



DEPARTMENT OF VETERANS AFFAIRS

8320-01

48 CFR Part 825

RIN 2900-AQ79

VA Acquisition Regulation: Foreign Acquisition

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove any procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, will publish them in the Federal Register. VA will combine related topics, as appropriate. This rulemaking removes VAAR coverage concerning Foreign Acquisition.

DATES: Comments must be received on or before [Insert date 60 days after date of publication in the *FEDERAL REGISTER*] to be considered in the formulation of the final rule.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Office of Regulation Policy and Management

(00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1064, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AQ79 – VA Acquisition Regulation: Foreign Acquisition.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Bogdan Vaga, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street, NW, Washington, DC 20001, (202) 382-2667. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is issued under the authority of the Office of Federal Procurement Policy (OFPP) Act which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR.

VA is proposing to revise the VAAR to add new policy or regulatory requirements and to remove any redundant guidance and guidance that is applicable only to VA’s internal operating processes or procedures. Codified acquisition regulations may be amended and revised only through rulemaking. All amendments, revisions and

removals have been reviewed and concurred with by VA's Integrated Product Team of agency stakeholders.

The VAAR uses the regulatory structure and arrangement of the FAR and headings and subject areas are consistent with FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, and sections.

The Office of Federal Procurement Policy Act, as codified in 41 U.S.C. 1707, provides the authority for the Federal Acquisition Regulation and for the issuance of agency acquisition regulations consistent with the FAR.

When Federal agencies acquire supplies and services using appropriated funds, the purchase is governed by the FAR, set forth at Title 48 Code of Federal Regulations (CFR), chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. The VAAR is set forth at Title 48 CFR, chapter 8, parts 801 to 873.

Discussion and Analysis

VA proposes to make the following changes to the VAAR in this phase of its revision and streamlining initiative. For procedural guidance cited below that is proposed to be deleted from the VAAR, each section cited for removal has been considered for inclusion in VA's internal agency operating procedures in accordance with FAR 1.301(a)(2). Similarly, delegations of authority that are removed from the VAAR will be included in the VAAM as internal departmental guidance. The VAAM is being created in parallel with these revisions to the VAAR and is not subject to the

rulemaking process as they are internal VA procedures and guidance. The VAAM will not be finalized until corresponding VAAR parts are finalized, and therefore the VAAM is not yet available on line.

VAAR PART 825—FOREIGN ACQUISITION

We propose to remove and reserve VAAR Part 825 as much of the information it contains is internal and procedural in nature. Subpart 825.1, Buy American Act—Supplies, is proposed to be removed and reserved. Under this subpart, Section 825.103, Exceptions, will be removed and moved to the VAAM as the information included is internal and procedural in nature. Section 825.104, Nonavailable articles, is proposed for removal as the items listed on the nonavailable list are now available from domestic sources. Subpart 825.2 was previously removed and reserved as a part of Final Rule AQ18.

We propose to remove and reserve subpart 825.6, Trade Sanctions. Under this subpart, section 825.602, Exceptions, is proposed for removal as this information is no longer relevant. The corresponding FAR subpart, 25.6 is entitled, “American Recovery and Reinvestment Act—Buy American Statute—Construction Materials.” The VAAR subpart and section predate the Recovery Act and therefore have been removed as it does not serve to implement or supplement the current FAR coverage at the corresponding FAR subpart.

Under this regulatory action, we propose to remove and reserve subpart 825.8, Other International Agreements and Coordination. Under this subpart, section 825.870, Technical assistance, will be removed and moved to the VAAM as it provides

procedural guidance to VA's contracting officers regarding whom to contact if they have questions regarding international contracts.

We propose to remove and reserve subpart 825.9, Customs and Duties. Under this subpart, section 825.902-70, Technical assistance, is proposed for removal. This section is being removed as it provides outdated procedural guidance directing contracting officers to contact the US Customs and Border Protection for technical assistance for clearing items through customs.

This proposed rule would remove and reserve subpart 825.10, Additional Foreign Acquisition Regulations. Under this subpart, section 825.1001, Waiver of right to examination of records, will be removed and moved to the VAAM as it provides procedural guidance and assigns responsibility for preparing and submitted D&Fs as required in FAR 25.1001.

This proposed rule also removes and reserves subpart 825.11, Solicitation Provisions and Contract Clauses. Under this subpart, section 825.1102 was previously removed and reserved under Final Rule AQ18.

Effect of Rulemaking

Title 48, Federal Acquisition Regulations System, Chapter 8, Department of Veterans Affairs, of the Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent VA's implementation of its legal authority and publication of the Department of Veterans Affairs Acquisition Regulation (VAAR) for the cited applicable parts. Other than future amendments to this rule or governing statutes for the cited applicable parts, or as otherwise authorized by approved deviations or waivers in

accordance with Federal Acquisition Regulation (FAR) subpart 1.4, Deviations from the FAR, and as implemented by VAAR subpart 801.4, Deviations from the FAR or VAAR, no contrary guidance or procedures would be authorized. All existing or subsequent VA guidance would be read to conform with the rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking as pertains to the cited applicable VAAR parts.

Executive Orders 12866, 13563 and 13771

Executive Orders (EOs) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

This proposed rule is not expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This rulemaking does not change VA's policy regarding small businesses, does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. On this basis, the proposed rule would not have an economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for

inflation) in any one year. This proposed rule will have no such effect on State, local, and tribal Governments or on the private sector.

List of Subjects

48 CFR Part 825

Customs duties and inspection, Foreign currencies, Foreign trade, Government procurement.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on January 24, 2020, for publication.

Consuela Benjamin,
Regulation Development Coordinator,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

Accordingly, under the authority of 40 U.S.C. 121(c), 41 U.S.C. 1702; and 48 CFR 1.301-1.304 VA proposes to amend 48 CFR by removing and reserving part 825.

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